

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NORBERTO JAVIER FELIX-TORRES,

Plaintiff,

-against-

9:06-CV-1090
(LEK/DRH)

HAROLD GRAHAM, Superintendent,
Auburn Correctional Facility, *et al*,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on September 21, 2007 by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 15). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Norberto Javier Felix-Torres, which were filed on October 9, 2007. Objections (Dkt. No. 18).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 15) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

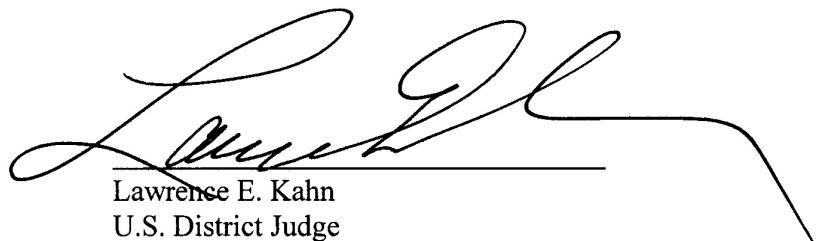
ORDERED, that Defendants' Motion to Dismiss be **GRANTED in part** as to Felix-Torres' substantive due process claim as to all defendants and **DENIED in part** in all other respects; and it is further

ORDERED, that the Complaint (Dkt. No. 1) be **DISMISSED without prejudice as to the four "John Doe" defendants**; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: October 17, 2007
 Albany, New York



Lawrence E. Kahn
U.S. District Judge